

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBY RAY WILDER,

Defendant-Appellant.

UNPUBLISHED

January 17, 2012

No. 301327

Wayne Circuit Court

LC No. 10-006616-FC

Before: MURRAY, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of three counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a) (person under 13 years of age), and two counts of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a) (person under 13 years of age). The trial court sentenced defendant to 25 to 75 years' imprisonment for each CSC-I conviction, and 3 to 15 years' imprisonment for each CSC-II conviction. Because there was sufficient evidence to support defendant's convictions, we affirm.

Defendant was charged in the instant matter as a result of accusations by his nine-year-old relative that defendant had performed sexual acts on her when she was approximately seven years old. During the time of the alleged acts, the victim and defendant both lived with defendant's mother, along with several other relatives.¹ The victim testified that defendant touched her "private part" with "[h]is finger," moving his finger "[u]p and down and side to side." The victim testified that defendant "put his private part in [her] private part" more than one time and further testified that defendant "put his private part in [her] butt." After moving out of the house into foster care, the victim told her foster mother what had occurred. Defendant, however, testified at trial that the alleged incidents never happened and that he was being blamed for things he did not do. Despite his testimony, the jury found defendant guilty of the three counts of CSC-I and two counts of CSC-II.

¹ Defendant is the victim's mother's cousin. However, defendant testified that the victim was his niece and the victim referred to defendant as her uncle.

On appeal, defendant contends that there was insufficient evidence to support his convictions of CSC-I.² This Court reviews de novo challenges to the sufficiency of evidence. *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). We must determine whether, in viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could have found all the elements of the crime charged were proven beyond a reasonable doubt. *Id.*

To sustain a conviction under MCL 750.520b(1), the prosecution must prove sexual penetration with another person and the existence of an additional circumstance. In this case, the additional circumstance alleged was “[t]hat other person is under 13 years of age.” MCL 750.520b(1)(a). Therefore, the elements of CSC-I are sexual penetration with another person and that the other person is under 13 years of age. *People v Waclawski*, 286 Mich App 634, 676; 780 NW2d 321 (2009). Defendant does not dispute that the victim was under 13 years of age when the alleged acts occurred. Thus, only the sexual penetration element is in dispute.

“Sexual penetration” is defined as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.” MCL 750.520a(r). Here, the victim testified that defendant touched her “private part” with his mouth underneath her clothes, “put his private part in [her] private part” more than one time, touched her “private part” with “[h]is finger,” and put his finger in her private part “[m]ore than once.” This testimony was sufficient for a rational trier of fact to find at least three instances of sexual penetration based on cunnilingus, penis into genital opening, and finger into genital opening.

Moreover, in a prosecution under MCL 750.520b, the victim’s testimony need not be corroborated. MCL 750.520h. The testimony of the victim may be sufficient evidence to establish a sexual penetration and support the jury’s verdict. See, *People v Robideau*, 94 Mich App 663, 674; 289 NW2d 846 (1980).

Defendant further contends that the victim’s credibility was so questionable that the prosecutor failed to present sufficient evidence of sexual penetration. However, in *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007), this Court stated:

This Court will not interfere with the trier of fact’s role of determining the weight of the evidence or the credibility of witnesses. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. All conflicts in the evidence must be resolved in favor of the prosecution. [Citations omitted.]

Accordingly, we will not interfere with the jury’s determination of the credibility of the victim, defendant, or other witnesses and the weight of the evidence. Based on the victim’s testimony

² Defendant does not challenge the CSC-II convictions.

alone, a rational trier of fact could have found that the elements of CSC-I were proven beyond a reasonable doubt.

Affirmed.

/s/ Christopher M. Murray

/s/ Michael J. Talbot

/s/ Deborah A. Servitto